



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	3/04/04	Bill No:	AB 1791
Tax:	Internet	Author:	Chavez
Board Position:		Related Bills:	

BILL SUMMARY

This bill would re-enact California's Internet Tax Nondiscrimination Act until January 1, 2010.

Summary of Amendments

Since the previous analysis, amendments to this bill incorporate suggested technical amendments that add the proposed provisions to law rather than amend them since the prior provisions had been repealed due to the sunset date. Additional amendments add definitions of key terms.

ANALYSIS

Background

State law: The California Internet Tax Freedom Act provisions expired as of January 1, 2004. Part 32 (commencing with Section 65001) of Division 2 of the Revenue and Taxation Code was added by AB 1614 (Ch. 351, Stats. 1998) to create the "California Internet Tax Freedom Act." Subdivision (h) of Section 65002 states the legislative intent that no existing or future state taxes or state fees be imposed by the state in a discriminatory manner upon Internet access or online computer services.

Subdivision (a) of Section 65004 specifies that for the period January 1, 1999 through January 1, 2004, no local government may impose, assess, or attempt to collect any tax or fee on: 1) Internet access, online computer services, or the use of either; 2) a bit tax or bandwidth tax; or 3) any discriminatory tax on Internet access or online computer services. Subdivision (b) of Section 65004 provides that this prohibition does not include any new or existing tax of general application, including but not limited to any sales and use tax, business license tax, or utility user tax that is imposed or assessed in a uniform and nondiscriminatory manner, as specified.

Under existing law, Part 18.3 (commencing with Section 38061) of the Revenue and Taxation Code, as added by SB 1933 (Stats. 2000, Ch. 619), the California Commission on Tax Policy in the New Economy was created to examine the impact of the Internet and other forms of electronic technology on the sales and use tax, telecommunications taxes, property taxes, and income taxes, as specified. Section 38066 required the Commission to submit an interim report to the Governor and the Legislature not later

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than 12 months from the date of the Commission's first public meeting and a final report with recommendations not later than 24 months from the date of the Commission's first public meeting. The Commission issued the interim report to the Governor and the Legislature in November 2002.

Federal law: Under Title XI and XII of the Omnibus Appropriations Act of 1998, approved as H.R. 4328 by Congress on October 20, 1998 and signed as Public Law 105-277 on October 21, 1998, the federal "Internet Tax Freedom Act" was created to do the following:

- Prohibit state and local governments from taxing Internet access from October 1, 1998 until October 21, 2001.
- Prohibit state and local governments from imposing taxes that would subject buyers and sellers of electronic commerce to taxation in multiple states and protect against the imposition of a new tax liability for consumers and vendors involved in commercial transactions over the Internet, including the application of discriminatory tax collection requirements imposed on out-of-state businesses through strained interpretations of "nexus."
- Establish a commission to study electronic commerce tax issues and report back to Congress after 18 months on whether electronic commerce should be taxed, and if so, how such commerce can be taxed in a manner that ensures that it will not be subject to special, multiple, or discriminatory taxes.
- Specify that it is the Sense of Congress that there should be no federal taxes on Internet access or electronic commerce.
- Declare that the Internet should be a tariff-free zone.

On November 28, 2001, H.R. 1552 was signed by the President to extend the Internet Tax Freedom Act until November 1, 2003.

Several measures to extend the federal Internet Tax Freedom Act were considered prior to November 1, 2003. Currently, none of those bills have been signed into law. Therefore, the federal Internet Tax Freedom Act is no longer in effect.

Proposed Law

This bill would add Part 32 (commencing with Section 65001) to Division 2 of the Revenue and Taxation Code as the California Internet Tax Nondiscrimination Act. The proposed law would reinstate the recently repealed Internet Tax Freedom Act provisions that provide that no city, county, or city and county may impose, assess, or attempt to collect any tax or fee on: 1) Internet access, online computer services, or the use of either; 2) a bit tax or bandwidth tax; or 3) any discriminatory tax on Internet access or online computer services. This bill would also provide that this prohibition would not include any new or existing tax of general application, including but not limited to any sales and use tax, business license tax, or utility user tax that is imposed or assessed in a uniform and nondiscriminatory manner, as specified.

This bill would also define the following key terms: internet, online computer services, internet access, franchise fee, discriminatory, bit tax, and bandwidth tax.

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This bill contains an urgency clause and would become effective immediately upon passage. This bill also contains a sunset provision that would allow the provisions to remain in effect until January 1, 2010.

Legislative History

Assembly Bill 1614 (Ch. 351, Stats. 1998) established the California Internet Tax Freedom Act and imposed a three-year moratorium on the imposition of new or discriminatory taxes on Internet access and online computer services.

A measure to extend the sunset date was considered during the 2000 Legislative Session. That measure, AB 1784 (Lempert, et al.) was enacted into law (Chapter 618). However, the bill never became operative because the bill also contained an uncoded section that provided that AB 1784 would only become operative if Assembly Bill 2412 was enacted and became effective on or before January 1, 2001. Since Assembly Bill 2412 was vetoed by the Governor, the provisions of AB 1784 never became operative. (Assembly Bill 2412, Migden and Aroner, would have required certain out-of-state dot-com retailers to collect the applicable use tax if they were related to a substantially similar retailer operating in California, as specified.)

Two bills to extend the sunset date were introduced during the 2001 Legislative Session. Assembly Bill 228 (J. Campbell) would have extended the sunset date until January 1, 2005. AB 228 was never heard in the Assembly Revenue and Taxation Committee.

Another measure, Senate Bill 394 (Ch. 343, Stats. 2001) extended the sunset date until January 1, 2004, provided that the interim report required by Section 38066 was submitted to the Governor and the Legislature on or before December 1, 2002. If the report was not issued timely, the sunset date would be extended only until January 1, 2003. As indicated previously, the report was issued in November 2002, so the sunset date for the California Internet Tax Freedom Act was extended until January 1, 2004.

Last year, AB 128 (Campbell) sought to extend the sunset date to January 1, 2008. That bill was held in the Assembly Appropriations Committee.

COMMENTS

1. **Sponsor and purpose.** The measure is sponsored by the author. The purpose of this bill is to continue a responsible tax policy regarding the taxation of the Internet so as to avoid any potential burdens placed on this evolving medium.
2. **Summary of amendments.** March 4 amendments incorporate suggested technical amendments that add the proposed provisions to law rather than amend them since the prior provisions had been repealed due to the sunset date. Additional amendments add definitions of key terms.

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3. **There is pending federal legislation to also extend the federal Internet Tax Freedom Act.** The current Federal Internet Tax Freedom Act sunset date is November 1, 2003. Three bills pertaining to Federal Internet taxation have been introduced in the 108th Congress. S. 52, introduced by Senator Wyden, HR 49, introduced by Congressman Cox, and S. 150, introduced by Senator Allen, would make the federal moratorium permanent.
4. **This bill would not impact the Board's administration of current taxes.** The moratorium the Internet Tax Freedom Act imposes is on new taxes, not existing taxes.
5. **California Commission on Tax Policy in the New Economy Report.** Section 38066 of the Revenue and Taxation Code required the California Commission on Tax Policy in the New Economy (Commission) to submit an interim report to the Governor and the Legislature not later than 12 months from the date of the Commission's first public meeting and a final report with recommendations not later than 24 months from the date of the Commission's first public meeting. The interim report was submitted on November 25, 2002. The report identified tax policy questions that need to be addressed and discussed current tax law. The interim report did not provide any recommendations or solutions.

The Commission issued their final report in December 2003. The final report contained several recommendations for tax policy reform, including improving use tax collections, broadening the sales tax base in conjunction with a rate reduction and the proposed elimination of selected sales and use tax exemptions.

COST ESTIMATE

Enactment of this measure would not have any impact on the Board's administrative costs.

REVENUE ESTIMATE

Enactment of this measure would have no impact on the State's or local jurisdictions' sales and use tax revenues nor would it impact the revenues derived from the imposition of the Emergency Telephone Users Surcharge or any other fee or tax administered by the Board.

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